

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service Support)	

**Notice of Inquiry Regarding Issues Raised by the February 23, 2005, United States
Court of Appeals for the Tenth Circuit in the Qwest II Decision**

Comments of the Wyoming Public Service Commission

May 8, 2009

Contents

Introduction..... 3

Background 3

 Wyoming Effort..... 6

Defining Rate Comparability..... 8

 FCC Analysis of Comparable Rates..... 10

Defining Sufficiency 12

Bringing Comparability and Sufficiency Together 16

Parties’ Proposals..... 17

Conclusion 18

Appendix A..... 19

Introduction

The Wyoming Public Service Commission (WyPSC) submits these initial comments in the matter of the Federal Communications Commission's (FCC or the Commission) notice of inquiry (NOI) concerning the remand by the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) in *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (*Qwest II*). The WyPSC applauds the fact the FCC has released this NOI, and looks forward to offering reply comments (as appropriate) on or before June 8, 2009. In accordance with the FCC's March 6, 2009, response to the Tenth Circuit, the WyPSC also anticipates a further notice of proposed rulemaking from the FCC no later than December 15, 2009, and a final FCC order by April 16, 2010.

The WyPSC hopes the FCC will set forth revised rules providing for a high-cost universal service fund that is sufficient to promote reasonable comparability of rates in Wyoming in accordance with the principles of section 254(b)(3) of the Telecommunications Act of 1996 (the 1996 Act). With background discussion and analysis of the current regime for federal universal service for non-rural carriers,¹ these comments respond to the NOI concerning parties' proposals and additional issues for comment.

Background

Rate comparability review and certification for areas served by non-rural carriers under 47 C.F.R. § 54.316 requires state commissions to annually review the comparability of residential rates in rural areas of the state served by non-rural incumbent local exchange carriers to urban rates nationwide. Qwest Corporation (Qwest) (Study Area Code 515108) is the only non-rural incumbent local exchange carrier in Wyoming and Qwest also serves in rural areas of the state. 47 C.F.R. § 54.316 also requires certification whether rates are reasonably comparable pursuant to the universal service principles set forth in section 254(b)(3) of the 1996 Act.

Rate review and certification is performed pursuant to the FCC's expanded certification process contained in the FCC's *Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-249 released October 27, 2003 (commonly known as the *Remand Order*). The nationwide urban rate benchmark equals the most recent weighted average urban rate plus two weighted average standard deviations. The weighted average urban rate and

¹ Non-rural carrier means a carrier that is not a "rural telephone company." Pursuant to 47 U.S.C. §153, "rural telephone company" means "a local exchange carrier operating entity to the extent that such entity: (A) provides common carrier service to any local exchange carrier study area that does not include either (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996."

weighted average standard deviation are found in the most recent *Reference Book of Rates, Price Indices, and Expenditures for Telephone Service* (Reference Book) published by the Wireline Competition Bureau of the FCC.

Table 1 presents the WyPSC’s September 29, 2008, certification of residential rural rates for the non-rural carrier in Wyoming. The basic computation is more fully described in the Joint Board’s Recommended Decision, in paragraph 86 of the FCC’s *Remand Order* and as contained in Appendix F to the *Remand Order*. **Table 1** presents, in detail, the residential rate data for the most rural areas (Rural Zone 3) within Wyoming as required by the *Remand Order* and 47 C.F.R. § 54.316. **Table 1** shows rural residential customers served by the Wyoming non-rural incumbent local exchange carrier pay a monthly rate of \$49.50. Residential customers located in Rural Zone 1 and Rural Zone 2 also pay the monthly rate of **\$49.50**. One hundred percent (100%) of the federal high cost support received by Qwest in Wyoming is reflected as an explicit and direct bill credit to its rural customers. Based on these facts, the methods in which the average urban rate was calculated and the rate comparison requirements of the *Remand Order*, the WyPSC concludes Qwest’s rural residential rates are not reasonably comparable to the nationwide urban rate benchmark of \$37.36 found at page I-4 of the Reference Book. Another factor impacting the rate comparison is the continued presence of substantial amounts of implicit subsidies in local rates constituting the average urban rate and the nationwide urban rate benchmark. There are no such subsidies in Qwest Wyoming’s rates.

Table 1
Wyoming Rural Residential Rate Computation, Current Rate

Basic Residential Access Line Rate	\$69.35
Federal Universal Service Fund Credit	(\$28.70)
Wyoming Universal Service Fund Credit	(\$5.55)
Net Residential Rate Subject to Mandatory Surcharges and Taxes	\$35.10
Federal Subscriber Line Charge	\$6.50
Federal Universal Service Fund Surcharge	\$3.51
Wyoming Universal Service Fund Surcharge	\$0.69
Telecommunications Relay System Surcharge	\$0.06
Wyoming Lifeline Program Surcharge	\$0.15
E911 Emergency Calling System Tax	\$0.75
Federal Excise Tax	\$1.05
Wyoming State Sales Tax	\$1.68
Total Basic Residential Service Rate to Customer	\$49.50

There are several reasons why non-rural carrier rates for Wyoming's rural residential consumers are not reasonably comparable. Perhaps the most determinative factor is Wyoming's low population density.

Wyoming is the second least populated state. It had only 522,830 people in 2007, less than 5.4 persons per square mile. Almost 45% of the population lives in the ten largest cities, only two of which exceed 50,000 people. Visitors otherwise commonly find small communities where railroads and highways intersect. About half of Wyoming is federal land, and most of that is largely vacant – national forests, national parks, wilderness, and grasslands. Many Wyomingites live an extended distance from the nearest town.

Fewer homes in large areas occur in low local line density, which is a controlling factor in the economics of providing universal service in Wyoming. For example, Qwest's wire center in Lusk, Wyoming has a serving area nearly three times larger than the entire state of Rhode Island. However, the Lusk wire center has a local loop density of less than one access line per square mile. By contrast, within the Washington, D.C. city limits there are approximately 10,000 access lines per square mile. Factoring in rugged terrain and extreme weather conditions, this means that the cost of service is high, and it is expensive to provide universal service to many areas of Wyoming.

The FCC NOI

In the first two sentences of the introduction to the NOI, the FCC states:

"In this notice of inquiry (NOI), we seek to refresh the record regarding the issues raised by the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) in the *Qwest II* decision (footnote omitted). In that decision the Tenth Circuit invalidated the Commission's high-cost universal service support mechanism for non-rural carriers, which determines the amount of support to be provided to each state by comparing the statewide average forward-looking cost per line for non-rural carriers to a nationwide cost benchmark."²

As an intervening party in *Qwest II*, the WyPSC has long been waiting for the FCC to define a universal service policy for non-rural carriers that is sufficient to provide reasonably comparable prices for supported services.

Unfortunately, the first thing the FCC has done in the NOI is to emphasize a desire to "refresh the record" on various parties' proposals. The NOI begins by asking for comments on proposals for re-targeting support, redefining cost as a proxy for rates, improving the FCC's cost model, combining rural and non-rural mechanisms, and commitments to universal service for broadband and wireless. In this way, the Commission again blurs the focus of what should be a very straightforward endeavor.

² In the Matter of High-Cost Universal Service Support, WC Docket No. 05-337, Federal-State Joint Board on Universal Service, CC Docket No. 96-45. FCC 09-28, released April 8, 2009. Par. 1.

Wyoming Effort

A major factor determining the expense of universal service in Wyoming is that Wyoming, unlike any other state, has cost-based rates for its rural areas (a fact recognized several times by the FCC in the *Remand Order*). The WyPSC has fully implemented the statutory mandates of the pro-competitive Wyoming Telecommunications Act of 1995 (W.S. §§ 37-15-101 through 37-15-502). Relevant sections of the 1995 Wyoming Act are W.S. § 37-15-402, which required cost-based pricing for all retail telecommunications services in Wyoming; W.S. § 37-15-403 which prohibited cross subsidies and eliminated implicit subsidies; and W.S. § 37-15-501, which established the Wyoming Universal Service Fund.

Wyoming's only non-rural carrier, Qwest, now has in place de-averaged cost-based residential rates with all implicit subsidies removed from residential rates. At the same time, the WyPSC has implemented an explicit subsidy support program – the Wyoming Universal Service Fund. The residential rate shown **Table 1** reflects the truly high cost, rural nature of most of Wyoming.

The WyPSC pursued a remedy for this residential rate disparity through its request for further federal action, provided to state commissions in Part IV.D.2.e. of the *Remand Order*. On December 21, 2004, the WyPSC, along with the Wyoming Office of Consumer Advocate, filed a *Joint Petition for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier (Joint Petition)* with the FCC. In the *Joint Petition*, the WyPSC provided a summary of the background, circumstances and history of the WyPSC's request for additional federal universal service funds. It clearly demonstrated that Wyoming has taken *all* necessary steps to achieve reasonable comparability through our actions and the application of existing federal support. In response to the *Joint Petition*, the FCC opened a proceeding and established a pleading cycle on February 14, 2005, in CC Docket 96-45, to address the issues raised by the WPSC. That proceeding remains pending before the FCC.

The WyPSC has consistently focused on the central issues of the *Qwest II* remand order -- comparability and sufficiency. The list below summarizes Wyoming's efforts in this regard:

1. January 3, 2000: WyPSC filed a petition for reconsideration of the ninth report and order in CC Docket No. 96-45, seeking deaveraging of support to non-rural carriers at the zone level, or alternatively a rural state exemption.
2. January 21, 2000: WyPSC filed an ex parte regarding its petition for reconsideration of the Commission's ninth report and order in CC 96-45.
3. March 30, 2000: WyPSC filed a petition for waiver of the FCC's targeting rules in 47 CFR §§ 54.309 and 54.311.
4. December 19, 2001: WyPSC filed a supplemental petition for reconsideration.

5. December 2002: WyPSC filed comments on the Joint Board Recommended Decision, telling the Wyoming story again, describing lack of comparability or sufficiency.
6. April 25, 2002: WyPSC filed reply comments.
7. January 28, 2004: WyPSC filed intervention at Tenth Circuit in *Qwest v FCC*, Case No. 03-9617.
8. October 2004: WyPSC filed non-rural rate comparability certification, WyPSC reporting that rates are not comparable.
9. December 21, 2004: WyPSC and Wyoming Office of Consumer Advocate filed a joint petition for supplemental federal universal service funding for Qwest.
10. September 2005: WyPSC filed non-rural rate comparability certification reporting that rates are not comparable.
11. March 27, 2006: In the matter of Federal State Joint Board on Universal Service High Cost Universal Service Support, WC Docket No. 05-337, CC Docket No. CC 96-45, WyPSC filed comments, again reminding the FCC of its *Qwest II* obligations.-
12. December 20, 2007: WyPSC filed non-rural residential rate comparability certification, stating:

“The WPSC pursued a remedy for this residential rate disparity through its request for further federal action, provided to state commissions in Part IV.D.2.e. of the *Remand Order*. On December 21, 2004, the WPSC, along with the Wyoming Office of Consumer Advocate, filed a *Joint Petition for Supplemental Federal Universal Service Funds for Customers of Wyoming’s Non-Rural Incumbent Local Exchange Carrier (Joint Petition)*, with the FCC. In the *Joint Petition*, the WPSC provided a summary of the background, circumstances and history of the WyPSC’s request for additional federal universal service funds. The *Joint Petition* clearly demonstrates Wyoming has taken all necessary steps to achieve reasonable comparability through our actions and the application of existing federal support. In response to the *Joint Petition*, the FCC opened a proceeding and established a pleading cycle on February 14, 2005, in CC Docket 96-45, to address the issues raised by the WPSC. That proceeding is currently pending before the FCC.”

13. April 17, 2008: Joint comments of the Maine PUC, ConnectME Authority, WyPSC, and the Vermont DPS in the matter of the Joint Board Recommendation in the Matter of High Cost Support, WC Docket No. 05-337, CC Docket No. CC 96-45, were filed, stating at page 15:

“This Commission also must determine what “reasonably comparable” means pursuant to the remand of its decision to *Qwest II*. (footnote omitted). The Commission has yet to issue an order responding to the Tenth Circuit Court of Appeals’ decision in *Qwest II*. It has now been over three years since the Court directed the Commission to revise key elements of its non-rural carrier high cost commenter support rules so that sufficient support would be provided to non-rural carriers. Consumers in rural states have been waiting too long for the Commission to correct its misinterpretation of the statute and provide sufficient support to those states. A legal finding as to what constitutes “reasonably comparable” rates and

service and what constitutes “sufficient” support must be made before the Commission proceeds to make the functional and legal findings.”

14. June 2, 2008: -Joint reply comments of the Vermont PSB, Vermont DPS, Maine PUC, ConnectME Authority, and the WyPSC filed in the matter of the Joint Board Recommendation in the Matter of High Cost Support, WC Docket No. 05-337, CC Docket No. CC 96-45 stating at page 5:

“The Vermont, Wyoming, and Maine state commissions, and commissions and related agencies from Nebraska, South Dakota, Kentucky, and West Virginia, have pressed the Commission to resolve the 10th Circuit remand issues for many months, and several carriers have requested waivers of universal service rules to provide company-specific fixes . . . It is imperative that the Commission adopt proper definitions and standards now to guide long term reform.”

15. September 29, 2008: WyPSC filed a residential rate comparability certification for Wyoming’s non-rural incumbent local exchange carrier serving in rural areas within Wyoming pursuant to 47 C.F.R. § 54.316 (CC Docket No. 96-45), stating:

“Wyoming has taken all necessary steps to achieve reasonable comparability through our actions and the application of existing federal support. In response to the *Joint Petition*, the FCC opened a proceeding and established a pleading cycle on February 14, 2005, in CC Docket 96-45, to address the issues raised by the WYPSC. That proceeding is currently pending before the FCC.”

16. November 26, 2008: WyPSC filed comments in intercarrier compensation reform/universal service reform docket, reminding the FCC of its unfulfilled obligations to define comparability and sufficiency under *Qwest II*.
17. December 22, 2008: WyPSC files reply comments in ICC/USF Reform docket jointly with Vermont, Maine, Iowa, and Nebraska.

Defining Rate Comparability

The information received by the FCC from the states concerning comparability of rates is problematic due to inconsistent and incomplete reporting. It does, however, provide some useful information that illustrates the significant amount by which rates in Wyoming fall outside any reasonable comparability parameters. In spite of Wyoming’s efforts, Qwest’s rates for supported service in Wyoming are among the highest in the nation.

In discussing reasonable comparability of prices the WyPSC thinks it is useful to consider the residential non-rural carrier rate comparability certifications each state is required to provide the FCC every year by October 1. A search on May 1, 2009, of the FCC’s electronic comment filing system database for the ten week period August 1, 2008, through October 15, 2008, reveals 478 records for the 96-45 proceeding. Based upon a review of the 478 records, it appears that in 2008 only 26 states certified residential rate comparability for areas served by the non-rural carrier. Only 12 states

stated what the actual residential rural rate was.³ Furthermore, of the states that declared what they thought the FCC's benchmark rate was, four different benchmarks were used for comparison.⁴ Several of the states that certified rate comparability simply stated that rates in their state were below the benchmark, without stating what they thought the benchmark was, or stating their residential rate.

The residential rates that were disclosed in state letters certifying comparability of rates are summarized in **Table 2** below.⁵

³ 1-Colorado, 2-Hawaii, 3-Michigan, 4-Mississippi, 5-Missouri, 6-New Mexico, 7-Oregon, 8-Pennsylvania, 9-Virginia, 10-Wisconsin, and 11- Wyoming. Vermont filed a certification of measured rates from which it is difficult to draw comparisons.

⁴ Idaho, Kentucky, Michigan, Pennsylvania, Vermont, and Virginia compared rates to \$34.58, a number which does not appear in the FCC's Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, 2008 (Reference Book). Alabama, Hawaii, Mississippi, Missouri, New Mexico, North Carolina, Oregon, West Virginia, and Wisconsin used \$36.52, which is two weighted standard deviations above the weighted average residential rate for selected cities (\$25.62), found at Table 1.13 of the Reference Book. Wyoming used \$37.36, which is what is stated at page I-4 of the Reference Book. It would seem that not only is the benchmark confusing to many states, it is also not certain in the mind of the FCC either.

⁵ Vermont certified rates for measured services which are not incorporated in the WyPSC's analysis of flat rates. 14 states certified that their non-rural carrier residential rural rates are below the benchmark but did not say what their rate was: 1- Alabama, 2-Idaho, 3-Iowa, 4-Kentucky, 5-Maine, 6-Montana, 7-Nebraska, 8-North Carolina, 9-South Dakota, 10-Tennessee, 11-Utah, 12- Vermont, 13-Washington, and 14-West Virginia.

Table 2
Certified Rates of 11 States

	Certified Rate (\$)
Pennsylvania Verizon A	19.63
Pennsylvania Verizon D	21.07
Hawaii Lanai	21.32
Oregon Verizon	22.09
Hawaii Molokai	22.41
Pennsylvania Verizon North A	22.50
Pennsylvania Verizon E	22.77
Michigan AT&T	22.86
Pennsylvania Verizon North D	23.76
Oregon Qwest low	23.86
Hawaii Kauai	24.31
Hawaii Maui	24.31
New Mexico	24.46
Pennsylvania Verizon North E	24.84
Hawaii Hawaii	24.99
Mississippi	25.03
Colorado	25.54
Hawaii Oahu	26.52
Oregon Qwest high	27.08
Wisconsin Verizon low	28.02
Missouri	28.16
Michigan Verizon	28.67
Virginia	28.69
Wisconsin AT&T low	29.05
Wisconsin AT&T high	29.43
Wisconsin Verizon high	33.33
Wyoming	49.50
Average of Certified Rates	26.08

FCC Analysis of Comparable Rates

According to the FCC Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, 2008 (Reference Book):

“In October 2003, the Federal Communications Commission adopted a recommendation by the Federal-State Joint Board on Universal Service establishing an annual adjusted nationwide urban rate benchmark for purposes of determining universal service support for non-rural carriers. This benchmark is used by the states and the Commission as a tool to assess the reasonable comparability of rates in rural and high-cost areas served by non-rural carriers to nationwide urban rates.(footnote omitted) The urban rate benchmark adopted by the Commission is based upon the most recent average urban residential rate as shown in Table 1.1.

Because of the great variation in urban rates nationwide, the Commission adopted a “standard deviation analysis” which measures the dispersion of urban rates from the average. As such, an urban rate benchmark level of two (weighted) standard deviations above the (weighted) average urban rate is used. Table 1.13 presents the results of such a standard deviation analysis for the residential rates reported in the Urban Rates Survey as of October 15, 2007. The average, plus the two standard deviation benchmark, is \$37.36.”⁶

At Table 1.4 the Reference Book presents monthly residential telephone rates in 95 sample cities (as of October 15, 2007). The maximum rate found in Table 1.4 is \$38.59. The mathematical average rate in Table 1.4 is \$25.31 and the standard deviation is \$5.04. The minimum rate in Table 1.4 is \$16.70. The FCC used Bureau of Labor Statistics data to calculate weighted averages. **Table 3 below** analyzes the FCC’s work on calculating the weighted averages and standard deviation figures.

Table 3
Weighted Averages and Standard Deviations

Weighted average residential rate, Reference Book, Table 1.13	\$25.62
Weighted standard deviation, Reference Book, Table 1.13	\$5.45
Weighted average plus two standard deviations	\$36.52
Wyoming rate as a percent of weighted average	193%
Wyoming rate as a percent of benchmark of \$36.52	136%

No rates for any city in Wyoming are included in the FCC’s analysis. Wyoming’s rate is 36% above the benchmark of \$36.52. According to statistical theory, by including data within plus or minus two standard deviations of the mean, 95% of the data is represented. By extrapolation, Wyoming’s rate is therefore in the top 2.5% in the nation. The FCC does not appear to take Wyoming into account in implementing its universal service policy regarding customers of non-rural carriers.

⁶ Pages I-3 to I-4.

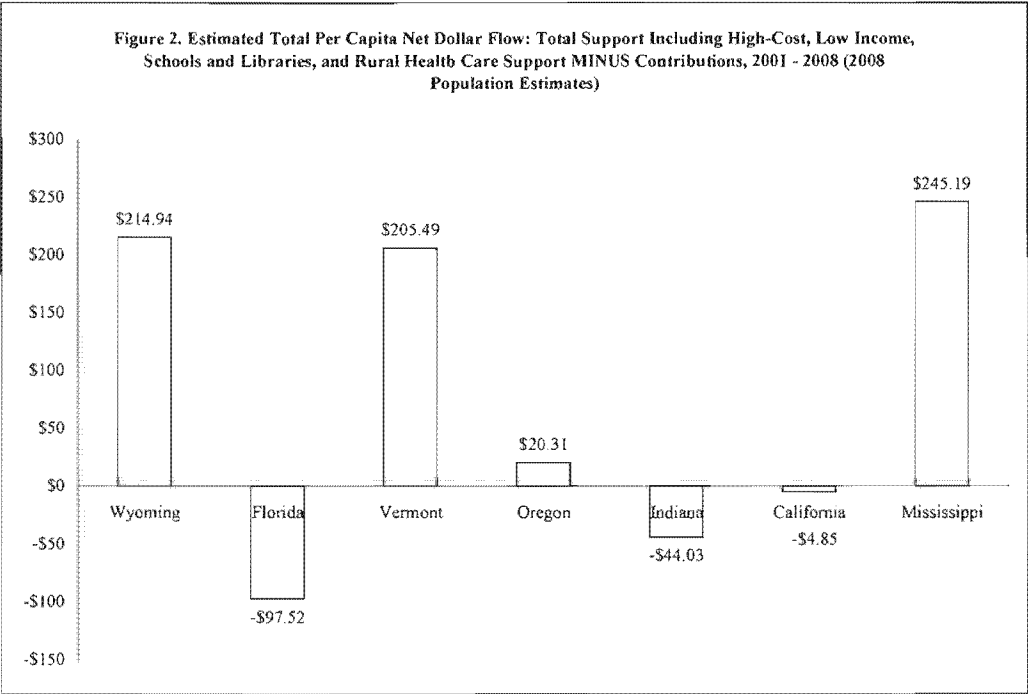
Defining Sufficiency

Figure 1

Rank	Total USF
1	California
2	Texas
3	Mississippi
4	New York
5	Kansas
6	Louisiana
7	Oklahoma
8	Alaska
9	Georgia
10	Florida
11	Wisconsin
12	Minnesota
13	Puerto Rico
14	Alabama
15	Illinois
16	North Carolina
17	Ohio
18	Arizona
19	Iowa
20	Arkansas
21	Washington
22	Missouri
23	Pennsylvania
24	Kentucky
25	Michigan
26	Nebraska
27	South Carolina
28	Virginia
29	New Mexico
30	Colorado
31	South Dakota
32	Tennessee
33	Indiana
34	Oregon
35	North Dakota
36	Montana
37	West Virginia
38	Wyoming
39	Idaho
40	New Jersey
41	Hawaii
42	Maine
43	Utah
44	Massachusetts
45	Nevada
46	Vermont
47	Virgin Islands
48	Connecticut
49	Maryland
50	New Hampshire
51	Guam
52	Rhode Island
53	American Samoa
54	Northern Mariana Is
55	Delaware
56	Dist. of Columbia

The WyPSC realizes that any proposal likely to increase the size of the fund, particularly a proposal advanced by a net recipient, will draw opposition from those justifiably concerned about the size and sustainability of the fund. However, it is important to consider that high-cost support accounts for a very small portion of total support, and appropriate resolution of the sufficiency and rate comparability issues directly related to *Qwest II* can be achieved at a cost that will likewise be very small in relation to the overall size of the fund. Wyoming receives more than it pays under the current universal service regime. However, the amount of additional high-cost support that is needed to give Wyoming sufficient support to promote comparable rates is small relative to the overall fund. It has been the WyPSC’s experience that whenever sufficiency of universal service funding is discussed, the issue of how much money particular jurisdictions receive is raised. It is the WyPSC’s opinion that, in order to be fair, such a discussion must account for all universal service programs, including funding for high-cost support, as well as funding for schools and libraries, rural health care, and low income support. **Figure 1** ranks the states, protectorates, and territories by the total amount of 2007 federal universal service support they each receive.⁷ The data include all federal universal service support payments including high-cost, low income, schools and libraries, and rural health care programs. The intensity of the shading indicates rank. Shading in red at the top of **Figure 1** indicates the ten states receiving the greatest amount of support payments, and the white shaded portions at the bottom of **Figure 1** indicates the states receiving the smallest amount of support payments. As shown in **Figure 1**, California is ranked number 1 because it receives more federal universal service support than any other state, protectorate, or territory, \$629,957,000 in 2007. The District of Columbia receives the least federal universal service support, \$1,191,000 in 2007, and is ranked number 56. Wyoming received \$69,715,000 in 2007, and is in the lower half of the ranking at number 38.

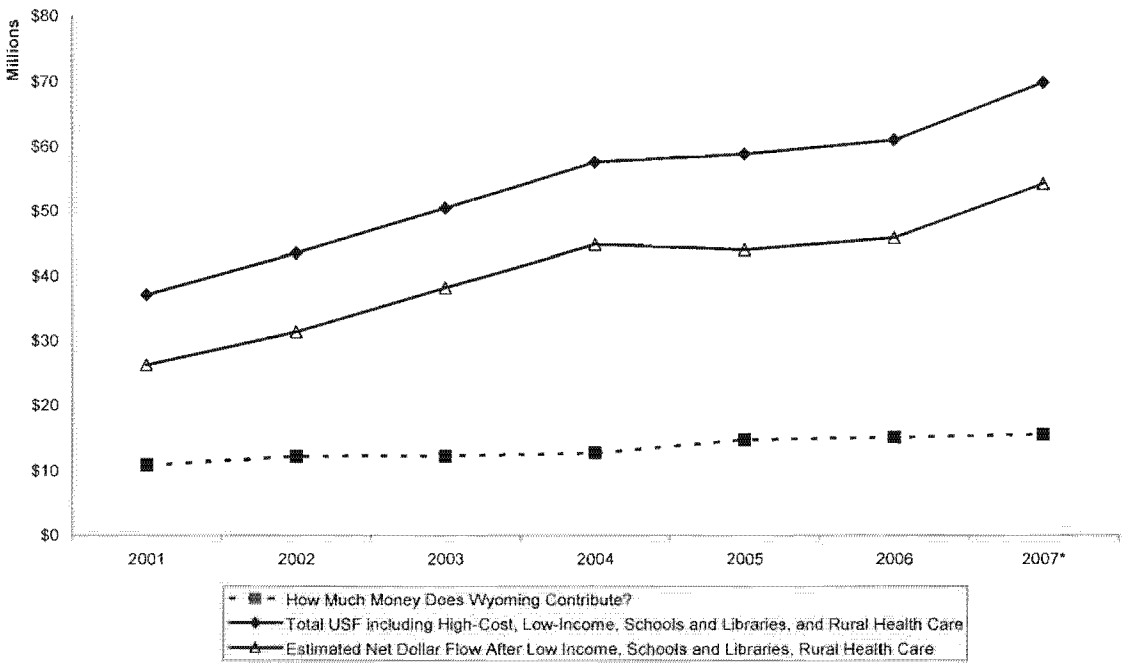
⁷ See Appendix A to review the raw data used in the analysis of receipts and contributions. Appendix A is a copy of the data in Table 1.12 which was excerpted from the Federal-State Joint Board on Universal Service December, 2008, Monitoring Report that was released in December of 2008. According to the monitoring report, the data is effective through June 2008. A copy is available at <http://www.fcc.gov/wcb/iatd/monitor.html>



Although 38 other states receive more universal service funds, on a per capita basis support to Wyoming is very significant as shown in **Figure 2**, which shows data for selected states. Using 2008 population estimates from the Census Bureau, **Figure 2** shows that, for the period 2001 – 2008 Wyoming received total universal service support of \$214.94 per person after accounting for contributions into the fund. On the same basis, Mississippi received \$245.19 per person, and Floridians contributed \$97.52 more than they received. While the data in **Figures 1** and **2** do not focus strictly on high-cost funding, which is the subject of this discussion, by including contemporaneous observation of all universal service programs the notion of fairness is addressed.

Analyzing the total universal service fund consumption by each state is not the whole picture. It is important to take into account the amount of contribution to the fund from each state as well. Referring to Table 1.12 at the end of this report, estimated net dollar flow for a state is calculated by subtracting the total universal service support received by each state from the each state’s contribution to the fund. **Figure 3** illustrates Wyoming’s financial benefits from universal service over time. Universal service support to Wyoming has increased from 2001 – 2007, primarily due to the effects of increased funding for competitive eligible telecommunications carriers (CETCs), FCC policies that gave equal support to CETCs and did not limit support to one line per household, and the concomitant operation of market forces. Wyoming has remained a net recipient from the fund, but net receipts have remained fairly flat over time.

Figure 3. How much does Wyoming benefit from the federal universal service program, taking into account low income, schools and libraries and rural health care support?



In **Figure 4** the left-hand column ranks the total 2007 federal universal service support received by each state, from highest to lowest (taken from **Figure 1**). The right-hand column shows the ranking of the states by the estimated net dollar flow of the program. Note that each state retains its shading throughout the analysis. Also, notice how disparities jump out in the right hand column. As the reader follows a state's ranking from left to right, a shift in that state's ranking of more than three positions up or down indicates a significant change and the shading emphasizes relative positions instead of the magnitude of the shifts.

Figure 4 shows that Mississippi is the largest net recipient of universal service funding, receiving \$255,546,000 more than what it contributes. Notice that California is ranked 51st as a net contributor. This means that while California draws a great deal of money from the universal service fund (about \$629,957,000), it is also a very substantial net contributor to the fund. California actually funded 10.97% of the universal service fund in 2007, contributing \$774,218,000 in 2007. Florida is the largest net contributor, being a net payer into the system in the amount of - \$297,876,000 in 2007. Florida received \$183,382,000.

Wyoming is definitely a net recipient in the fund, in large part because on average Wyoming's cost to provide universal service is very high. Wyoming received \$69,715,000 in 2007, which is \$54,174,000 more than it contributed.

On the other hand, Rhode Island draws relatively little from the fund. With a rank of 52nd in the left-hand column it almost draws the least amount of money from the fund, but Rhode Island is ranked 35th in terms of net contributions.

Figure 4

Total USF	Rank	Estimated Net Dollar Flow
California	1	Mississippi
Texas	2	Alaska
Mississippi	3	Kansas
New York	4	Oklahoma
Kansas	5	Louisiana
Louisiana	6	Puerto Rico
Oklahoma	7	South Dakota
Alaska	8	North Dakota
Georgia	9	Nebraska
Florida	10	Arkansas
Wisconsin	11	Iowa
Minnesota	12	New Mexico
Puerto Rico	13	Montana
Alabama	14	Wisconsin
Illinois	15	Wyoming
North Carolina	16	Alabama
Ohio	17	Minnesota
Arizona	18	Kentucky
Iowa	19	Texas
Arkansas	20	West Virginia
Washington	21	Idaho
Missouri	22	Hawaii
Pennsylvania	23	Virgin Islands
Kentucky	24	Maine
Michigan	25	Vermont
Nebraska	26	South Carolina
South Carolina	27	Oregon
Virginia	28	Guam
New Mexico	29	Arizona
Colorado	30	American Samoa
South Dakota	31	Northern Mariana Is.
Tennessee	32	Missouri
Indiana	33	Utah
Oregon	34	Washington
North Dakota	35	Rhode Island
Montana	36	Colorado
West Virginia	37	Delaware
Wyoming	38	New Hampshire
Idaho	39	Nevada
New Jersey	40	Dist. of Columbia
Hawaii	41	Indiana
Maine	42	Georgia
Utah	43	Tennessee
Massachusetts	44	North Carolina
Nevada	45	Connecticut
Vermont	46	Michigan
Virgin Islands	47	Virginia
Connecticut	48	Ohio
Maryland	49	Massachusetts
New Hampshire	50	Illinois
Guam	51	California
Rhode Island	52	Maryland
American Samoa	53	Pennsylvania
Northern Mariana Is.	54	New Jersey
Delaware	55	New York
Dist. of Columbia	56	Florida

Bringing Comparability and Sufficiency Together

It is the WyPSC’s opinion that the FCC should recognize that providing a sufficient fund for Wyoming in order to allow for rate comparability in accordance with the principles of section 254(b)(3) of the 1996 Act is not as complex as some might suggest. To begin with, the previous discussion has not focused on the exact problem stemming from *Qwest II*. The problem in *Qwest II* focuses the inquiry on high-cost model support for non-rural carrier study areas.

Table 3.25 in the monitoring report provides that focus. It shows how much high-cost model support is provided in each state for incumbent local exchange carriers and competitive eligible telecommunications carriers (CETCs). High-cost model support to study areas served by non-rural carriers only flowed to ten states in 2007. The total amount of high-cost model support was \$351,389,587, which is about 5.1% of the total universal service fund including all high-cost support, and support for schools and libraries, rural health care, and low income programs (the total universal service fund in 2007, \$6,954,837,000, is shown in Appendix A).

Most jurisdictions do not receive *any* high-cost support for study areas served by non-rural carriers. Only ten states receive high-cost model support for such study areas; and as illustrated in **Table 4**, Wyoming is not the

Table 4
Non-Rural Carrier High-Cost Support, 2008, and Population Density

	State	High Cost Model Support	Percent	2007 Population Density Per Square Mile
1	Mississippi	\$205,116,701	58.4%	62.2
2	Alabama	\$44,807,573	12.8%	91.2
3	West Virginia	\$27,743,867	7.9%	75.3
4	Montana	\$19,268,642	5.5%	6.5
5	Kentucky	\$15,956,934	4.5%	106.8
6	Wyoming	\$13,082,438	3.7%	5.4
7	Nebraska	\$11,055,231	3.1%	23.1
8	Vermont	\$9,709,855	2.8%	67.2
9	South Dakota	\$2,451,344	0.7%	10.5
10	Maine	\$2,197,002	0.6%	42.7
11	Alaska		0	1.2
12	American Samoa		0	354
13	Arizona		0	55.8
14	Arkansas		0	54.4
15	California		0	234.4
16	Colorado		0	46.9
17	Connecticut		0	722.9
18	Delaware		0	442.6
19	Dist. of Columbia		0	9581.3
20	Florida		0	338.4
21	Georgia		0	164.8
22	Guam		0	819
23	Hawaii		0	199.8
24	Idaho		0	18.1
25	Illinois		0	231.2
26	Indiana		0	176.9
27	Iowa		0	53.5
28	Kansas		0	33.9
29	Louisiana		0	98.6
30	Maryland		0	574.8
31	Massachusetts		0	822.7
32	Michigan		0	177.3
33	Minnesota		0	65.3
34	Missouri		0	85.3
35	Nevada		0	23.4
36	New Hampshire		0	146.7
37	New Jersey		0	1171.1
38	New Mexico		0	16.2
39	New York		0	408.7
40	North Carolina		0	186
41	North Dakota		0	9.3
42	Northern Mariana Is.		0	448
43	Ohio		0	280
44	Oklahoma		0	52.7
45	Oregon		0	39
46	Pennsylvania		0	277.4
47	Puerto Rico		0	1135
48	Rhode Island		0	1012.3
49	South Carolina		0	146.4
50	Tennessee		0	149.4
51	Texas		0	91.3
52	Utah		0	32.2
53	Virgin Islands		0	804
54	Virginia		0	194.8
55	Washington		0	97.2
56	Wisconsin		0	103.1

recipient of the largest amount of such support. In fact, Wyoming only receives 3.7% of all such support, which is about 0.2% of the total universal service fund. Most states do not draw any high-cost model support for areas served by non-rural carriers. **Table 4** also provides information about population density, a major cost driver in the telecommunications industry.

Several parties have suggested allocating high-cost model support based upon a proxy for subscriber density in various proceedings, including Embarq (as described in the NOI). The WyPSC recommends consideration of route miles per subscriber as a reasonable proxy for density. Given the relatively minor impact of high-cost model support on the total universal service fund, such an approach appears to be a possible way of achieving reasonably comparable rates.

Recognizing differences in route miles per subscriber, a major cost driver, could be done in a manner which also might incorporate an additional benchmark test for support to areas served by non-rural carriers – if a state were below a chosen density benchmark proxy, and if the state had rates above a 125% funding benchmark (or some funding benchmark less than the current 135%) -- then that state could be qualified to receive additional support.

The simplicity of this idea has considerable appeal for solving what is a relatively small problem. It is simple. The data is readily available from existing FCC procedures and databases.

Parties' Proposals

The FCC's NOI opens discussion on several parties' proposals to reform the system. The WyPSC does not oppose the notion of the FCC and the nation embarking upon whatever work is necessary to make the high-cost model more accurate or useful. The WyPSC does not oppose the idea of working on ways to create funding for broadband. We hope the challenges will not prevent adequate and timely consideration of a solution to Wyoming's universal service funding needs.

Conclusion

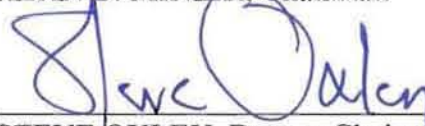
The WyPSC urges the FCC to maintain the focus of this proceeding squarely on the comparability and sufficiency issues identified by the Tenth Circuit in *Qwest II* and by the WyPSC in the many filings which it has made – consistently and accurately describing Wyoming’s persistent high costs, its success in implementing truly cost-based rates, and its success in establishing the Wyoming universal service fund. If this NOI reveals a strong desire to address the model issues, or broadband, then the WyPSC urges the FCC in the strongest possible terms to confront these and other issues in separate proceedings and to address the definitions of comparability and sufficiency in the upcoming further notice of proposed rulemaking. Wyoming’s issues are unique in most aspects, and as described, may be rather simple to address in the timeframes to which the FCC is committed.

The WyPSC deeply appreciates the FCC’s hard and earnest work on this issue, and the opportunity to discuss potential issues to explore and resolve in the upcoming further notice of proposed rulemaking.

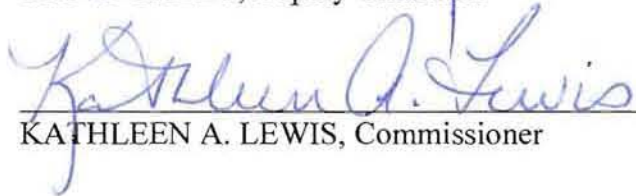
Respectfully submitted May 8, 2009.



ALAN B. MINIER, Chairman



STEVE OXLEY, Deputy Chairman



KATHLEEN A. LEWIS, Commissioner

Appendix A

Universal Service Support Mechanisms by State: 2007
(Annual Payments and Contributions in Thousands)

State or Jurisdiction	Payments from USF to Service Providers ¹					Estimated Contributions ²		Estimated Net Dollar Flow ³	
	High-Cost Support	Low-Income Support	Schools & Libraries	Rural Health Care	Total				
					Amount	% of Total	Amount	% of Total	
Alabama	\$111,459	\$6,524	\$39,411	\$24	\$157,418	2.26%	\$106,499	1.51%	\$50,919
Alaska	161,356	17,305	14,135	19,875	212,671	3.06%	23,008	0.33%	189,663
American Samoa	3,370	59	0	0	3,429	0.05%	356	0.01%	3,073
Arizona	70,919	22,278	48,115	1,196	142,508	2.05%	139,264	1.97%	3,244
Arkansas	126,294	2,950	8,274	41	137,559	1.98%	64,558	0.91%	73,001
California	100,638	272,482	256,555	282	629,957	9.06%	774,218	10.97%	-144,261
Colorado	82,051	3,310	22,627	108	108,096	1.55%	128,698	1.82%	-20,602
Connecticut	1,264	4,645	19,405	0	25,314	0.36%	96,243	1.36%	-70,929
Delaware	245	230	740	0	1,215	0.02%	25,498	0.36%	-24,283
Dist. of Columbia	0	670	521	0	1,191	0.02%	33,588	0.48%	-32,397
Florida	82,308	20,912	79,955	207	183,382	2.64%	481,258	6.82%	-297,876
Georgia	112,636	9,375	63,973	718	186,702	2.68%	225,836	3.20%	-39,134
Guam	10,792	298	-44	0	11,046	0.16%	4,789	0.07%	6,257
Hawaii	51,864	574	2,282	182	54,902	0.79%	30,589	0.43%	24,313
Idaho	54,069	3,795	3,722	142	61,728	0.89%	35,537	0.50%	26,191
Illinois	67,267	10,414	73,681	447	151,809	2.18%	281,700	3.99%	-129,891
Indiana	71,734	5,705	21,279	275	98,993	1.42%	133,714	1.89%	-34,721
Iowa	126,109	6,033	9,911	412	142,465	2.05%	71,784	1.02%	70,681
Kansas	222,477	3,038	14,859	649	241,023	3.47%	64,030	0.91%	176,993
Kentucky	96,931	8,262	22,823	207	128,223	1.84%	90,313	1.28%	37,910
Louisiana	163,131	3,711	65,075	594	232,511	3.34%	100,521	1.42%	131,990
Maine	36,567	8,337	6,097	23	51,024	0.73%	31,389	0.44%	19,635
Maryland	4,207	628	9,000	0	13,835	0.20%	158,323	2.24%	-144,488
Massachusetts	2,299	11,933	25,140	52	39,424	0.57%	168,735	2.39%	-129,311
Michigan	67,241	15,385	44,793	593	128,012	1.84%	200,506	2.84%	-72,494
Minnesota	132,444	7,629	20,792	1,457	162,322	2.33%	114,208	1.62%	48,114
Mississippi	283,404	5,147	29,939	206	318,696	4.58%	63,150	0.89%	255,546
Missouri	98,235	7,416	26,894	144	132,689	1.91%	136,864	1.94%	-4,175
Montana	77,282	4,355	3,455	555	85,647	1.23%	24,017	0.34%	61,630
Nebraska	106,178	2,509	7,758	1,460	117,905	1.70%	40,073	0.57%	77,832
Nevada	29,634	3,102	5,253	62	38,051	0.55%	69,851	0.99%	-31,800
New Hampshire	9,365	580	1,472	7	11,424	0.16%	35,860	0.51%	-24,436
New Jersey	1,664	13,428	41,999	0	57,091	0.82%	240,613	3.41%	-183,522
New Mexico	67,388	14,864	29,521	350	112,123	1.61%	47,987	0.68%	64,136
New York	52,542	36,209	160,032	55	248,838	3.58%	445,600	6.31%	-196,762
North Carolina	77,872	13,973	51,277	189	143,311	2.06%	210,160	2.98%	-66,849
North Dakota	84,771	4,092	5,217	508	94,588	1.36%	15,498	0.22%	79,090
Northern Mariana Is.	1,630	116	868	0	2,614	0.04%	1,047	0.01%	1,567
Ohio	46,205	32,188	64,777	60	143,230	2.06%	242,186	3.43%	-98,956
Oklahoma	129,185	49,976	44,305	205	223,671	3.22%	77,565	1.10%	146,106
Oregon	80,970	5,705	11,102	68	97,845	1.41%	85,714	1.21%	12,131
Pennsylvania	55,552	15,944	57,382	74	128,952	1.85%	293,667	4.16%	-164,715
Puerto Rico	135,026	16,888	9,287	0	161,201	2.32%	62,900	0.89%	98,301
Rhode Island	31	4,076	6,138	0	10,245	0.15%	23,489	0.33%	-13,244
South Carolina	74,186	3,685	38,874	47	116,792	1.68%	102,110	1.45%	14,682
South Dakota	93,098	6,876	5,803	1,101	106,878	1.54%	18,397	0.26%	88,481
Tennessee	52,295	8,829	40,561	101	101,786	1.46%	143,843	2.04%	-42,057
Texas	245,735	89,411	184,370	940	520,456	7.48%	485,236	6.87%	35,220
Utah	24,454	3,733	14,100	770	43,057	0.62%	54,675	0.77%	-11,618
Vermont	31,408	3,081	1,453	130	36,072	0.52%	17,837	0.25%	18,235
Virgin Islands	25,685	29	6,335	54	32,103	0.46%	8,895	0.13%	23,208
Virginia	79,549	2,304	29,748	527	112,128	1.61%	201,062	2.85%	-88,934
Washington	97,505	16,062	20,324	53	133,944	1.93%	147,065	2.08%	-13,121
West Virginia	63,345	733	8,898	159	73,135	1.05%	44,778	0.63%	28,357
Wisconsin	141,853	10,096	20,042	1,900	173,891	2.50%	118,069	1.67%	55,822
Wyoming	61,014	873	7,656	172	69,715	1.00%	15,541	0.22%	54,174
Total	\$4,286,733	\$822,762	\$1,807,961	\$37,381	\$6,954,837	100.00%	\$7,058,910	100.00%	-\$104,073

Notes: Figures may not add due to rounding. Support payments do not include quarterly true-ups. USF is an abbreviation for the Universal Service Fund.

¹ Data from USAC's Annual Report.

² Estimated contributions include administrative cost of approximately \$104 million, as shown in USAC's Annual Report.

Allocation of contributions among states is an FCC staff estimate.

³ Net dollar flow is positive when payments from USF to carriers exceed contributions to USF. Total is negative because of administrative expenses.